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16 GAP INC.

17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN FRANCISCO DIVISION
22

23 JOEL RUIZ, On Behalf of Himself and All Others
24 Similarly Situated,

25 Plaintiff,

26 v.

27 GAP, INC., and VANGENT, INC.,

28 Defendants.

Case No. C 07-5739 SC

**DEFENDANT GAP INC.'S
ANSWER TO FIRST AMENDED
COMPLAINT AND
AFFIRMATIVE DEFENSES**

GAP INC.'S ANSWER

GAP Inc. ("GAP") answers Plaintiff's first amended complaint ("FAC") as set forth below solely on behalf of GAP. To the extent any response to the conclusory headings used in the first amended complaint may be deemed required, GAP denies any allegations set forth in those headings. GAP denies any allegation not deemed to be addressed below, if any, to the extent that allegation is deemed to require a response.

PARTIES

1. Answering paragraph 1, GAP lacks knowledge or information sufficient to form a belief regarding Plaintiff Joel Ruiz's state of citizenship. GAP denies that Plaintiff has been injured. Plaintiff's remaining allegations state conclusions of law to which no answer is required. To the extent the remaining allegations require an answer, they are denied.

2. GAP admits the allegations of paragraph 2 of the FAC.

3. The allegations of paragraph 3 are not directed at GAP. Therefore, no answer is required by GAP.

NATURE OF ACTION

4. GAP admits the allegations of paragraph 4 of the FAC.

5. The allegations of paragraph 5 are not directed at GAP. Therefore, no answer is required by GAP. To the extent an answer to these allegations is required, GAP lacks knowledge or information sufficient to admit or deny them.

6. GAP admits that on September 17, 2007, two laptop computers were stolen from Vangent, Inc. ("Vangent"), a third party vendor that manages job applicant data. GAP also admits that one of the laptops contained the personal information of approximately 750,000 job applicants. GAP denies the remaining allegations of paragraph 6 of the FAC.

7. GAP admits that, with respect to the one stolen laptop that contained personal information of job applicants, such personal information was not encrypted. GAP denies the remaining allegations of paragraph 7 of the FAC.

8. GAP admits that Plaintiff applied for a position with Old Navy, one of GAP's stores, through an online application process hosted by Vangent and that Plaintiff provided his

1 social security number as part of his job application. GAP denies, however, that Plaintiff was
 2 required to provide his social security number in order to “access” its online application process.
 3 GAP also denies the remaining allegations of paragraph 8 of the FAC.

4 9. GAP admits that the data on one of the stolen laptops included the names, social
 5 security numbers, addresses, and other personal information and identities of people from the
 6 United States, Puerto Rico, and Canada who applied online or by phone for store positions with
 7 GAP, Old Navy, Banana Republic, and Outlet stores between July 2006 and June 2007. GAP
 8 denies the remaining allegations of paragraph 9 of the FAC.

9 10. GAP denies the allegations of paragraph 10 of the FAC.

10 11. GAP denies the allegations of paragraph 11 of the FAC.

11 12. GAP admits that Plaintiff purports to seek damages and/or restitution, and any
 12 other such relief as the Court may award. GAP denies the remaining allegations of paragraph 12
 13 of the FAC.

14 JURISDICTION AND VENUE

15 13. Answering paragraph 13, GAP does not contest that this Court has personal
 16 jurisdiction as to GAP for purposes of this case. GAP denies that this case should proceed as a
 17 class action. As for the remaining allegations of this paragraph, they state conclusions of law,
 18 and, therefore, no answer is required by GAP.

19 14. Paragraph 14 states conclusions of law to which no answer is required.

20 FACTUAL ALLEGATIONS

21 Background of GAP

22 15. GAP admits the allegations of paragraph 15 of the FAC.

23 16. GAP admits the allegations of paragraph 16 of the FAC

24 Standard Business Practices for Ensuring Information Safety

25 17. Answering paragraph 17, GAP admits that the Gramm-Leach Bliley Act was
 26 enacted on November 12, 1999, and that California has passed laws codified at Civil Code
 27 §§ 1798.80 *et seq.* and § 1798.85(3). Plaintiff’s remaining allegations state conclusions of law to
 28 which no answer is required.

1 18. Answering paragraph 18, GAP admits that the FTC publication entitled
2 “Protecting Personal Information: A Guide for Business,” is attached to the FAC as Exhibit A.
3 The publication is a readily available public document and speaks for itself. GAP denies that
4 Plaintiff has accurately, completely, or correctly summarized this publication and, for that reason,
5 GAP denies any allegation purporting to characterize this publication that is inconsistent with the
6 publication.

7 19. Answering paragraph 19, GAP admits that the FTC Report is a publicly available
8 document and speaks for itself. GAP denies that Plaintiff has accurately, completely, or correctly
9 summarized this publication and, for that reason, GAP denies any allegation purporting to
10 characterize this publication that is inconsistent with the publication.

11 20. Answering paragraph 20, GAP admits that the FTC Report is a publicly available
12 document and speaks for itself. GAP denies that Plaintiff has accurately, completely, or correctly
13 summarized this publication and, for that reason, GAP denies any allegation purporting to
14 characterize this publication that is inconsistent with the publication.

15 21. GAP admits paragraph 21.

16 22. Answering paragraph 22, GAP admits that the California Department of Consumer
17 Affairs’ Office of Privacy Protection publication entitled, “Recommended Practices of Notice of
18 Security Breach Involving Personal Information,” dated February 2007, is attached to the FAC as
19 Exhibit B. The publication is a readily available public document and speaks for itself. GAP
20 denies that Plaintiff has accurately, completely, or correctly summarized this publication and, for
21 that reason, GAP denies any allegation purporting to characterize this publication that is
22 inconsistent with the publication.

23 23. Answering paragraph 23, GAP admits that the San Francisco Chronicle published
24 an article on September 29, 2007 discussing data security. The publication is a readily available
25 public document and speaks for itself. GAP denies that Plaintiff has accurately, completely, or
26 correctly summarized this publication and, for that reason, GAP denies any allegation purporting
27 to characterize this publication that is inconsistent with the publication. GAP lacks knowledge
28 and information sufficient to admit or deny the remaining allegations of paragraph 29 of the FAC.

1 24. Answering paragraph 24, GAP admits that CNNMoney.com published an article
2 on September 28, 2007 regarding the data breach. The publication is a readily available public
3 document and speaks for itself. GAP denies that Plaintiff has accurately, completely, or correctly
4 summarized this publication and, for that reason, GAP denies any allegation purporting to
5 characterize this publication that is inconsistent with the publication.

6 25. Answering paragraph 25, GAP admits that the United States Government
7 Accountability Office published a report in June 2007 on data breaches. The publication is a
8 readily available public document and speaks for itself. GAP denies that Plaintiff has accurately,
9 completely, or correctly summarized this publication and, for that reason, GAP denies any
10 allegation purporting to characterize this publication that is inconsistent with the publication.

11 26. Answering paragraph 26, GAP admits that the September 2008 President's
12 Identity Theft Task Force Report is a publicly available document and speaks for itself. GAP
13 denies that Plaintiff has accurately, completely, or correctly summarized this publication and, for
14 that reason, GAP denies any allegation purporting to characterize this publication that is
15 inconsistent with the publication.

16 **The Use of PII in Identity Theft**

17 27. Answering paragraph 27, GAP admits that "data breaches can lead to identity
18 theft," but further avers that, statistically, only a very small percentage ever do. GAP also admits
19 that the GAO Report is a readily available public document and speaks for itself. GAP denies
20 that Plaintiff has accurately, completely, or correctly summarized this publication and, for that
21 reason, GAP denies any allegation purporting to characterize this publication that is inconsistent
22 with the publication. GAP lacks knowledge and information sufficient to admit or deny the
23 remaining allegations of paragraph 27 of the FAC.

24 28. Answering paragraph 28, GAP admits that the GAO Report is a readily available
25 public document and speaks for itself. GAP denies that Plaintiff has accurately, completely, or
26 correctly summarized this publication and, for that reason, GAP denies any allegation purporting
27 to characterize this publication that is inconsistent with the publication.

1 29. Answering paragraph 29, insofar that Plaintiff is quoting from the GAO Report,
2 GAP admits that the GAO Report is a readily available document that speaks for itself. GAP
3 denies that Plaintiff has accurately, completely, or correctly summarized this publication and, for
4 that reason, GAP denies any allegation purporting to characterize this publication that is
5 inconsistent with the publication. GAP lacks knowledge and information sufficient to admit or
6 deny the remaining allegations of paragraph 29 of the FAC.

7 30. GAP lacks knowledge and information sufficient to admit or deny the allegations
8 in paragraph 30 of the FAC.

9 31. Answering paragraph 31, GAP admits that the GAO Report is a readily available
10 public document and speaks for itself. GAP denies that Plaintiff has accurately, completely, or
11 correctly summarized this publication and, for that reason, GAP denies any allegation purporting
12 to characterize this publication that is inconsistent with the publication. GAP lacks knowledge
13 and information sufficient to admit or deny the remaining allegations of paragraph 31 of the FAC.

14 **Gap and Vangent's Job Application Process**

15 32. GAP admits the allegations of paragraph 32 of the FAC.

16 33. Answering paragraph 33, GAP admits that it used Vangent to manage job
17 applications for in-store positions received through certain online application processes and over
18 the telephone. GAP further admits that Vangent had access to personal identifying information
19 provided by job applicants online or over the telephone, and that the personal identifying
20 information actually received by Vangent was stored in Vangent's database. GAP denies the
21 remaining allegations of paragraph 33.

22 34. Answering paragraph 34, GAP admits that in the course of using some online
23 application processes GAP informs job applicants of the Privacy Statement reflected in paragraph
24 34 of the FAC. GAP denies the remaining allegations of paragraph 34 of the FAC.

25 35. Answering paragraph 35, GAP admits that when applying for job positions using
26 certain online application processes, a job applicant is required to provide personal identifying
27 information as part of the process, including the applicant's social security number, birth date,
28 address, and phone number. GAP denies, however, that an applicant's social security number is

1 required to “access” any of these online application processes. GAP also denies the remaining
2 allegations of paragraph 35 of the FAC.

3 36. Answering paragraph 36, GAP admits that job applicants must provide their social
4 security number as part of applying for a position using certain online application processes.
5 GAP denies, however, that an applicant’s social security number is required to “access” any of
6 these online application processes. GAP denies the remaining allegations of paragraph 36 of the
7 FAC.

8 37. GAP admits that job applicants are required to consent to a background check
9 when applying for positions using certain online application processes. GAP denies the
10 remaining allegations of paragraph 37 of the FAC.

11 38. GAP admits that Plaintiff applied for a position with Old Navy in late 2006
12 through GAP’s online application process, and that Plaintiff was required to answer certain
13 questions and to provide his social security number, email, home address, and telephone number
14 as part of his job application. GAP denies, however, that Plaintiff’s social security number was
15 required to “access” the online application process. GAP also denies the remaining allegations of
16 paragraph 38 of the FAC.

17 **The Data Breach**

18 39. GAP admits that on September 17, 2007, two laptop computers were stolen from
19 Vangent’s office in Chicago, Illinois. GAP admits that one of the laptops contained the personal
20 information of persons that had applied to Old Navy, GAP, Banana Republic, or its outlet stores
21 by telephone or the internet from July 2006 to June 2007. GAP denies the remaining allegations
22 of paragraph 39 of the FAC.

23 40. GAP admits that the information contained on the stolen laptop was not encrypted.
24 GAP denies the remaining allegations of paragraph 40 of the FAC.

25 41. GAP admits that the information contained on the stolen laptop was not encrypted.
26 GAP lacks knowledge and information sufficient to admit or deny the remaining allegations of
27 paragraph 41 of the FAC.

28 42. GAP admits the allegations of paragraph 42 of the FAC.

1 43. GAP lacks knowledge and information sufficient to admit or deny the allegations
2 of paragraph 43 of the FAC.

3 44. GAP admits the allegations of paragraph 44 of the FAC.

4 45. GAP admits the allegations of paragraph 45.

5 46. GAP admits that one of the stolen laptops contained personal information received
6 from job applicants from the United States and Puerto Rico, and that such information was not
7 encrypted. GAP denies the remaining allegations of paragraph 46 of the FAC.

8 47. GAP admits that the laptop included personal information of applicants from
9 Canada, and admits that because such information did not include the Social Insurance numbers
10 of Canadian applicants, it did not notify those applicants. GAP denies the remaining allegations
11 of paragraph 47 of the FAC.

12 **Gap and Vangent Failed to Protect Plaintiff and Class Members' PII**

13 48. GAP denies the allegations of paragraph 48 of the FAC.

14 49. Answering paragraph 49, GAP admits it entered into an Employment Screening
15 Services Agreement with Vangent, effective July 14, 2005, and that this Agreement speaks for
16 itself. GAP denies that Plaintiff has accurately, completely, or correctly summarized this
17 document and, for that reason, GAP denies any allegation purporting to characterize this
18 document that is inconsistent with the document.

19 50. Answering paragraph 50, GAP admits that the Employment Screening Services
20 Agreement is a document that speaks for itself. GAP denies that Plaintiff has accurately,
21 completely, or correctly summarized this document and, for that reason, GAP denies any
22 allegation purporting to characterize this document that is inconsistent with the document. GAP
23 denies the remaining allegations of paragraph 50 of the FAC.

24 51. Answering paragraph 51, GAP admits that the Employment Screening Services
25 Agreement is a document that speaks for itself. GAP denies that Plaintiff has accurately,
26 completely, or correctly summarized this document and, for that reason, GAP denies any
27 allegation purporting to characterize this document that is inconsistent with the document.
28

1 52. Answering paragraph 52, GAP admits that the Employment Screening Services
2 Agreement is a document that speaks for itself. GAP denies that Plaintiff has accurately,
3 completely, or correctly summarized this document and, for that reason, GAP denies any
4 allegation purporting to characterize this document that is inconsistent with the document. GAP
5 denies the remaining allegations of paragraph 52 of the FAC.

6 53. Answering paragraph 53, GAP admits that the Employment Screening Services
7 Agreement is a document that speaks for itself. GAP denies that Plaintiff has accurately,
8 completely, or correctly summarized this document and, for that reason, GAP denies any
9 allegation purporting to characterize this document that is inconsistent with the document. GAP
10 denies the remaining allegations of paragraph 53 of the FAC.

11 54. Answering paragraph 54, GAP admits that the Employment Screening Services
12 Agreement is a document that speaks for itself and that GAP required in its own offices that
13 laptops be cable-locked or locked inside a desk. GAP denies that Plaintiff has accurately,
14 completely, or correctly summarized this document and, for that reason, GAP denies any
15 allegation purporting to characterize this document that is inconsistent with the document. GAP
16 denies the remaining allegations of paragraph 54 of the FAC.

17 55. The allegations of paragraph 55 are not directed at GAP. Therefore, no answer is
18 required by GAP. Insofar that an answer is necessary, however, GAP lacks knowledge and
19 information sufficient to admit or deny the allegations of paragraph 55 of the FAC.

20 56. Answering paragraph 56, GAP admits that the Employment Screening Services
21 Agreement is a document that speaks for itself. GAP denies that Plaintiff has accurately,
22 completely, or correctly summarized this document and, for that reason, GAP denies any
23 allegation purporting to characterize this document that is inconsistent with the document. GAP
24 denies the remaining allegations in paragraph 56.

25 57. Answering paragraph 57, GAP admits that the quotation in the FAC appears on its
26 website. GAP denies the remaining allegations of paragraph 57 of the FAC.

27 58. GAP denies the allegations of paragraph 58 of the FAC.

28 **The Inadequate Remedy**

1 59. GAP admits that it sent a letter, dated September 28, 2007, which was signed by
2 GAP Chairman and CEO Glenn Murphy. GAP lacks knowledge or information sufficient to
3 admit or deny the remaining allegations of paragraph 59 of the FAC.

4 60. GAP admits that the letter stated that GAP did not believe that the data on the
5 computer was the target of the theft or that the personal information had been accessed or used
6 improperly. GAP denies the remaining allegations of paragraph 60 of the FAC.

7 61. GAP denies the allegations of paragraph 61 of the FAC.

8 62. GAP admits that the letter referenced in paragraph 62 of the FAC did offer to
9 provide twelve months of credit monitoring and fraud assistance without charge and that the letter
10 also included a deadline of January 31, 2008 to sign up for this coverage. GAP further admits
11 that the monitoring offered is the "Triple Advantage Credit Monitoring Plan" by Experian. GAP
12 denies the remaining allegations of paragraph 62 of the FAC.

13 63. GAP denies the allegations of paragraph 63 of the FAC.

14 64. GAP denies the allegations of paragraph 64 of the FAC.

15 65. GAP denies the allegations of paragraph 65 of the FAC.

16 66. Paragraph 66 of the FAC states conclusions of law to which no answer is required.
17 To the extent the allegations require an answer, they are denied.

18 67. GAP affirmatively states that the terms and conditions of the credit monitoring
19 plan speak for themselves. GAP denies that Plaintiff has accurately, completely, or correctly
20 summarized the terms and conditions, and for that reason, GAP denies any allegation purporting
21 to characterize the terms and conditions that is inconsistent with the terms and conditions. GAP
22 lacks knowledge and information sufficient to admit or deny the remaining allegations of
23 paragraph 67 of the FAC.

24 **CLASS ACTION ALLEGATIONS**

25 68. Answering paragraph 68, Plaintiff's purported definition of a class is an assertion
26 of law to which no answer is required. To the extent those allegations require an answer, they are
27 denied. GAP denies that this case should proceed as a class action. The remaining allegations
28 state conclusions of law to which no answer is required.

69. GAP denies the allegations of paragraph 69 of the FAC.

70. GAP denies the allegations of paragraph 70 of the FAC.

71. GAP denies the allegations of paragraph 71 of the FAC.

72. GAP denies the allegations of paragraph 72 of the FAC.

73. GAP denies the allegations of paragraph 73 of the FAC.

74. GAP lacks sufficient knowledge or information to admit or deny the allegations of paragraph 74 of the FAC.

CAUSES OF ACTION

COUNT I

NEGLIGENCE

75. Answering paragraph 75, GAP incorporates by reference its responses to the foregoing paragraphs as if fully set forth herein.

76. Answering paragraph 76, GAP denies that it owed Plaintiff and the Class a duty to protect their private information of the sort and of the nature Plaintiff alleges.

77. GAP admits that it was aware of a standard in the industry relating to protecting the private information of employees and applicants, and was aware of the need to protect the personal information of its job applicants. GAP denies the remaining allegations of paragraph 77 of the FAC.

78. GAP denies the allegations of paragraph 78 of the FAC.

79. GAP denies the allegations of paragraph 79 of the FAC.

80. GAP denies the allegations of paragraph 80 of the FAC.

COUNT II

Violation of Cal. Civ. Code § 1798.85

81. Answering paragraph 81, GAP incorporates by reference its responses to the foregoing paragraphs as if fully set forth herein.

82. GAP denies the allegations of paragraph 82 of the FAC.

83. GAP denies the allegations of paragraph 83 of the FAC.

COUNT III

Breach of Contract (Against Vangent Only)

84. Answering paragraph 84, GAP incorporates by reference its response to the foregoing paragraphs as if fully set forth herein.

85. The allegations of paragraph 85 are not directed at GAP. Therefore no answer is required.

86. The allegations of paragraph 86 are not directed at GAP. Therefore no answer is required. To the extent an answer to the allegations is required, GAP denies the allegations.

87. The allegations of paragraph 87 are not directed at GAP. Therefore no answer is required.

88. The allegations of paragraph 88 are not directed at GAP. Therefore no answer is required.

89. The allegations of paragraph 89 are not directed at GAP. Therefore no answer is required.

90. The allegations of paragraph 90 are not directed at GAP. Therefore no answer is required.

91. The allegations for paragraph 91 are not directed at GAP. Therefore no answer is required.

PRAYER FOR RELIEF

GAP denies that Plaintiff is entitled to an order certifying the class or that damages or attorneys' fees should be awarded in any amount. GAP denies that Plaintiff is entitled to equitable relief.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof that GAP would not otherwise bear under applicable law, and without limitation as to any and all other affirmative defenses that GAP may have and that it may assert in this action, GAP asserts the following affirmative or additional defenses:

FIRST AFFIRMATIVE DEFENSE
(Lack of Standing)

Plaintiff lacks standing to assert the causes of action alleged in the FAC, either individually or in a representative capacity.

SECOND AFFIRMATIVE DEFENSE
(Lack of Injury)

Plaintiff's claims, and each of them, fail as a matter of law due to the absence of any legally-cognizable injury.

THIRD AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The FAC fails to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE
(Speculative Damages)

Plaintiff's claims are barred because he has not suffered any damages, or, if there any damages, they are vague, uncertain, imaginary and speculative.

FIFTH AFFIRMATIVE DEFENSE
(Conformity with Standards)

Plaintiff's claims are barred because GAP's statements, conduct, and actions, if any, were in conformity with and were pursuant to statutes, laws, governmental regulations, and industry standards based on the knowledge existing at the time of any such statements, conduct, or actions.

SIXTH AFFIRMATIVE DEFENSE
(Proximate Cause, Acts of Others)

To the extent Plaintiff has sustained any damages, these purported damages were proximately caused by others for whom GAP is not legally responsible. Such injuries were not caused by any conduct or inaction by GAP, or were not foreseeable, or both.

